

Dissent of Commissioners Lynch and Wood to the Energy Action Plan, May 8, 2003, Item CR-2

Coordination among agencies is good. Cooperation among agencies is good. Planning is good. All of these aspects of the Action Plan are positive. However, there is a difference of emphasis and philosophy that makes the document unsupportable at present. Our focus is on consumers. The Plan's focus is on competition. We want stability, predictability, consumer protection, low prices, environmental preservation, and regulatory fairness. The Plan talks about markets. We want to re-establish and strengthen the utilities' obligation to serve. The Plan wants to cultivate hybrid markets. We want to promote distributed renewables and new efficient, low-polluting, utility-owned generating plants. The Plan offers generic support for customer-owned generation in any form.

We want to ensure that utilities make wise economic choices when procuring or generating power. The plan wants to use "proper inducements" to help various kinds of distributed generation technologies to become economical. This is a euphemism for ratepayer provided subsidies. We want to restore investor confidence in California's regulated utilities. The plan talks of restoring investor confidence in California's energy markets. Stable energy markets, reliable energy supplies and adequate transmission systems are all admirable goals, standing alone, they miss the point if they do not explicitly address the needs of the California consumers.

We want to vigorously oppose FERC's efforts to invade areas of state jurisdiction. The Plan wants to work with FERC to redesign markets. We want to use the tools of regulation to provide consumers with the products and prices they desire. The Plan talks about continuing to rely on market forces to provide at least part of the answer.

Where one stands on these issues makes all of the difference when answering fundamental questions about energy planning and service. Someone who looks at an inkblot and sees markets will argue for higher reserve margins and redundant transmission facilities – adding billions of dollars in cost. One who looks at the same image and sees the face of a consumer will be searching for ways to keep costs low and stable, make supplies efficiently reliable, and support integrated planning and least-cost dispatch. It is this fundamental difference that drives the debate about such things as transmission adequacy and ISO rule changes. None of us may be so wedded to one vision that all of our choices will be true to a single course. However, the proposed Energy Action Plan steers straight down a path leading to deregulated energy markets. We do not agree that the Commission should take California consumers down this road and will not vote to support the Action Plan in its current form.

We have a further concern involving process that is fundamental. Where the Energy Plan reflects the expression of goals and an approach for moving forward, it is welcome, appropriate and even necessary. However, where it attempts to prescribe

specific outcomes for matters that require evidentiary records and careful scrutiny, it goes too far.

What is good and appropriate in terms of coordination and planning is perhaps reflected best by the section that addresses gas reliability and prices. In this section, the agencies commit to identify needed new facilities, monitor the market to guard against the exercise of market power, evaluate the net benefits of new supply options such as LNG, and support the appropriate use of long-term supply contracts to stabilize prices. These are broad goals that could appropriately frame the activities of the agencies without prejudging the outcome of formal proceedings.

But what the ad hoc subcommittee and this commission cannot do is to form advance commitments to decide in a certain way matters that must come before the agency. This is not a limitation of philosophy or style. It is a limit imposed by law.

Here are some examples of ways in which the Plan moves beyond appropriate planning and coordination. It sets goals for peak demand reduction through a variable pricing system. It does this, although it acknowledges that the Commission is actively evaluating such pricing systems in a pending proceeding. It declares an appropriate capacity range for new electric resource additions and an appropriate range for reserve margins although the Commission has yet to take the steps required by AB 57 before establishing such goals. Similarly, it jumps ahead of the AB 57 process to declare a level of needed new peaking capacity.

It declares that three specific new transmission projects are needed even though the Commission is required by law to make record-based needs assessments under Section 1001 and CEQA. One of the projects, the Path 15 upgrade, is the subject of two draft decisions that are currently pending before the Commission. The other two – a second Palo Verde-Devers line and an expansion to serve wind farms in Tehachapi -- are as-of-yet not even the subject of formal applications. It announces that sufficient new transmission must be built to ensure high quality power supply throughout the state, although those nice-sounding words suggest that the entire state should be wired as if it is the Silicon Valley. It prejudges the Commission's decision about departing load customers and pledges the adoption of exemptions for various technologies at levels not represented by any Commission orders.

We fear that some commissioners show an impatience for action that reflects more than a desire for government to act quickly. We are concerned that it reflects a desire to lock the agency into positions and commitments before it is burdened by such niceties as the facts in an evidentiary record and parties' interpretations of the law and policy.

In an apparent effort to answer this concern, the current draft contains a warning label, declaring that specific proposed actions may need to be fine-tuned or changed. However, this message is transparent. If the subcommittee did not intend for specific numbers to have meaning, then it would not have included them in the document. If the

signers did not intend for certain construction projects to be approved, then they would not have included words calling for their approval. As the disclaimer further states, this is a “blueprint”, intended to provide “direction, focus, and precision”. The obvious goal is to predetermine either the specific outcome or the substantive direction of various proceedings currently pending, or expected to be filed. We cannot pledge, in advance, to lower someone’s rates in a certain way, deny someone’s complaint, or approve someone’s petition. Nor can we skirt around pending proceedings to create new programs, set reserve margins or declare that certain new facilities are needed. To do so would be unfair. It would breed cynicism and it would violate the law. For these reasons, we cannot and will not support the adoption of the Energy Action Plan.

/s/ LORETTA M. LYNCH
Loretta M. Lynch
Commissioner

CARL WOOD
Carl Wood
Commissioner

San Francisco, California
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